

9 July 2012

Dear Denis,

I drafted my earlier reply to your letter of 21 June last while away in France and without access to a printer to enable me review properly what I had written. Now that I have returned home and have had a chance to review the letter, I have redrafted it and herewith the revised edition.

First, I want to thank you for your kind remarks about me and also I want to acknowledge the good relations we have had over the years. You write that I have disdain for you - this is not so. I like you personally and admire the success you have enjoyed from the exercise of your exceptional talents. I also acknowledge your consideration for me personally and, particularly, the encouragement and then the opportunity you gave me to become involved in broadcasting.

There is a section of your letter however, which I find disconcerting and which colours my estimation of the other points you make. It concerns the contention that you moved to Portugal some time before the sale of Esat Telecom to British Telecom, the inference, in the context, being that you did not move to Portugal to avoid the payment of capital gains tax on the profits you made personally from the sale of Esat.

You may recall a discussion in your office some years ago when I went to see you on another matter, during which discussion you opened a file on articles I had written over the previous few years concerning you. In that discussion the issue of you avoiding capital gains tax arose and, instead of claiming there was no connection with your move to Portugal with the avoidance of capital gains, you said that you did not want to pay capital gains tax because you believed the government would misuse the proceeds. We discussed then the amount of capital gains tax you avoided paying and you did not then demur from my estimation of £50 million.

My Irish Times column of 13 June was primarily a criticism of the government parties in the context of a proposed motion of censure on Mick Wallace. I recalled the censure motion on Michael Lowry, following the publication of the Moriarty Tribunal report in March 2011, where the Dáil unanimously (with the exception of Michael Lowry himself) voted censure on him based on a report no TD had read. I went on to note, as I had done in previous columns, that neither the Taoiseach nor any member of the government had criticised you for your defamation of the judiciary and had not stated whether they accepted the findings of the Tribunal. Furthermore, while censuring Michael Lowry for an act involving you, instead of censuring you, they fettered you.

I believe that was a valid criticism and nothing you have said disturbs that belief.

I accept your clarification of the company nexus involved in the sale to British Telecom but, I believe, nothing substantial turns on that point.

I accept your point regarding payments to Fine Gael.

I accept you have always rejected the findings of the Tribunal but I do not believe reference to that was relevant to the article I was writing about what I regarded as the hypocrisy of the government parties.

Regarding the amount of money or benefit transferred to Michael Lowry, I do not believe I significantly misrepresented the findings of the Tribunal.

You appear to be suggesting that I drew an equivalence between what appears to be straight-forward tax fraud on the part of Mick Wallace and your position. I think this is contrived and, incidentally, entirely untrue.

You are correct in believing I think you should not be permitted to control INM. My reasons for holding this belief are as follows:

- (i) I believe INM has too large a media presence in Ireland to be controlled by any one person and I stated this repeatedly when Tony O'Reilly controlled INM.
- (ii) This is even a more acute factor in your instance because of your considerable radio holdings.
- (iii) I believe that nobody who has significant corporate interests outside the media should be in control of a significant portion of the media for the usual accountability that the media supposedly exerts on corporate power is thereby blunted.
- (iv) The publication of exchanges between one of your representatives on the board of INM and the then CEO of INM, amounting to a direct attempt to interfere with editorial independence, on its own, in my opinion, makes you an unsuitable person to control INM (I am referring here to the correspondence concerning Sam Smyth).
- (v) I believe that there are special concerns concerning your control of INM because of the findings of the Tribunal – yes, such findings have no legal significance, but that does not mean they do not have very political and media significance. Until such time as you are in a position to convincingly refute the findings, then it is reasonable that the media weights the findings in its coverage of you and reasonable for me to believe that it is not in the public interest that you control such a major sector of the media in Ireland – but even if this were not a factor, I would still be opposed to you taking control of INM for the reasons stated above.
- (vi) There is a further factor arising from the Moriarty Tribunal findings: it is incumbent on the media to hold you accountable for what the Tribunal has established concerning you – essentially and by inference a very serious charge - and your control of a large sector of the media obstructs that accountability.

I have been critical of Tribunals, notably of the Planning Tribunal, because of its abuse of proper procedure, as found in a number of cases decided by the Supreme Court. But I do not accept your contention they had no regard for proper procedure. It certainly seems the Moriarty Tribunal wobbled on the issue of the culpability of civil servants in the award of the mobile phone license but that does not, in my opinion, contaminate its overall findings or specifically its findings regarding you.

I just cannot accept that the various money trails it established in relation to payments to Michael Lowry are *all* mistaken but maybe you can disabuse me of that impression.

I am certainly willing to meet you to discuss this again. I would prefer to meet you in a public house, hotel, or restaurant or café, rather than in your office.

Aside from that, I want to offer you the opportunity of a one hour interview on TV3 (actually 48 minutes) where you can put your case fully in relation to the relevant issues arising from the report and arising from your role in INM – the only stipulations I offer are that nobody is defamed and that you do not seek to talk down the clock to avoid answering crucial questions. I assume from the tone of some of your letter you would accept that I would endeavour to act fairly. I have discussed this offer with Andrew Hanlon, Director of News and Current Affairs at

TV3, whom you know, and he concurs with this offer

I am also willing to devote one of my columns in The Irish Times to your response to what I have written. I have not discussed this with the editor of the Irish Times, Kevin O'Sullivan, but I do not think there would be a difficulty with this. In future when dealing with these matters, I will refer specifically to the findings of the Tribunal.

Independently of these initiatives, I intend rehearsing the findings of the Moriarty tribunal again both on the TV programme and in columns I do for The Irish Times and The Sunday Business Post. Because of the voluminous nature of the report, very few people have read it and are therefore unaware of its detail. It think it is incumbent of us journalists to assist in the full public appreciation of what the report contains. I will put questions to you in relation to these initiatives, to ensure your side of the story is told but, where relevant, I will make clear my own judgement on where the balance of truth lies. I assume you will be disappointed to be informed of that but what the report revealed was, in my opinion, of enormous note and I believe it is incumbent of us in the media to communicate that to the public.

I note the third last paragraph where you threaten to sue me personally, which I regard as an attempt to stop me from making any critical comments of you henceforth arising from the Moriarty Tribunal report. In other words you will use your very considerably wealth to stifle criticism of you on the part of a journalist whom, you know, has not the means to match your financial firepower and could not possibly afford the half a million plus costs there would be involved in a libel trial. This I regard as an abuse of the wealth and the attendant power you have acquired and I will do what I can to resist that.

I do not enjoy being in conflict with you but I have found throughout my journalistic career that often friendships are compromised when friends assume powerful positions.

I look forward to hearing from you and to meeting you again.

Yours,

Vincent Browne